

AMENDED IN ASSEMBLY APRIL 1, 2008

AMENDED IN ASSEMBLY MARCH 24, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 2149

Introduced by Assembly Member Berg

(Coauthors: Assembly Members Arambula, Charles Calderon, Coto, De Leon, Jones, Lieber, Lieu, Mendoza, Parra, Swanson, Torrico, and Wolk)

February 20, 2008

An act to add Section 25235.3 to the Corporations Code, relating to securities.

LEGISLATIVE COUNSEL’S DIGEST

AB 2149, as amended, Berg. Investment advisers.

Existing law, the Corporate Securities Law of 1968, provides for the certification and regulation, by the Commissioner of Corporations, of investment advisers. Existing law makes it unlawful for an investment adviser to, among other things, defraud or engage in any transaction that operates as a fraud or deceit upon any client or prospective client, or represent that he or she is an investment counsel or to use the name “investment counsel” unless certain requirements have been met. Under existing law, a violation of these provisions is a crime and a violator is subject to specified penalties.

This bill would prohibit an investment adviser, *except as specified*, from using a credential or professional designation indicating or implying that he or she has a special certification or training in advising senior investors, as defined, unless that designation is from an accredited organization recognized by the commissioner. The bill would require

the commissioner to maintain a list of recognized accredited organizations. The bill would specify that a violation of these provisions is not a crime nor is a violator subject to specified penalties. The bill would make these provisions operative on July 1, 2009.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 25235.3 is added to the Corporations
2 Code, to read:
3 25235.3. (a) No investment adviser shall use a credential or
4 professional designation that indicates or implies that he or she
5 has a special certification or training in advising or serving senior
6 investors, unless that credential or professional designation has
7 been bestowed on that investment adviser by an accredited
8 organization recognized by the commissioner pursuant to
9 subdivision (b).
10 (b) (1) The commissioner may recognize an accredited
11 organization by rule or order. The commissioner shall consider
12 any request for recognition by an accredited organization.
13 (2) In determining whether to recognize an accredited
14 organization, the commissioner shall consider all of the following:
15 (A) Whether and the extent to which the accredited organization
16 is nationally recognized and independent.
17 (B) Whether it is for profit or nonprofit.
18 (C) Whether the primary purpose of the accredited organization
19 is to develop standards and implement methods for assuring the
20 competency of investment advisers who advise senior investors
21 and whether the organization has standards to address the status
22 of investment advisers who obtain the credential or designation
23 prior to accreditation.
24 (D) Any other factor the commissioner deems appropriate.
25 ~~(3) The~~
26 (3) The commissioner shall maintain a readily accessible list,
27 with contact information, of all recognized accredited
28 organizations.
29 (c) In determining whether a combination of words, or an
30 acronym standing for a combination of words, constitutes a
31 credential or professional designation indicating or implying that

1 an investment adviser has special certification or training in
2 advising senior investors, the commissioner shall consider the
3 following factors:

4 (1) Use of one or more words such as “senior,” “retirement,”
5 “elder,” or like words combined with one or more words such as
6 “certified,” “chartered,” “adviser,” “specialist,” or like words in
7 the name of the credential or professional designation.

8 (2) How those words are combined.

9 (3) Whether they are capitalized.

10 (d) For the purposes of this section, the term “senior investor”
11 shall mean a person 65 years of age or older.

12 (e) This section shall not apply to job titles used by an
13 investment adviser specifying his or her seniority within an
14 organization, or with an area of specialization within an
15 organization, unless the facts and circumstances associated with
16 the use of the job title either improperly indicate or imply
17 certification or training beyond that which the investment adviser
18 possesses or otherwise mislead senior investors.

19 *(f) This section shall not apply to an investment adviser using*
20 *a degree or certificate evidencing completion of an academic*
21 *program at an institution of higher learning that has been*
22 *accredited by an organization that is on the United States*
23 *Department of Education’s list entitled “Accrediting Agencies*
24 *Recognized for Title IV Purposes” unless the facts and*
25 *circumstances associated with the provision or use of that degree*
26 *or certificate either improperly indicate or imply training or*
27 *certification beyond that which the investment adviser possesses,*
28 *or otherwise mislead senior investors.*

29 ~~(f)~~

30 (g) Sections 25252, 25535, and 25540 shall not apply to this
31 section.

32 ~~(g)~~

33 (h) This section shall become operative on July 1, 2009.